

objection to receiving telephone solicitations relating to the customer's choice of retail electric providers.

(b) The commission shall establish and provide for the operation of a database to compile a list of *nonresidential electric* customers who object to receiving telephone solicitations. The commission may operate the database or contract with another entity to operate the database.

SECTION 4. A residential electric customer who on the effective date of this Act is enrolled on the list compiled under Section 39.1025, Utilities Code, remains on the list until the customer's enrollment expires. If the residential electric customer applies to renew enrollment on that list after the effective date of this Act, the customer shall be enrolled on the Texas no-call list established under Subchapter C, Chapter 44, Business & Commerce Code.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Passed by the House on March 31, 2005: Yeas 147, Nays 0, 2 present, not voting;
passed by the Senate on May 12, 2005: Yeas 31, Nays 0.

Approved May 27, 2005.

Effective May 27, 2005.

CHAPTER 172

H.B. No. 307

AN ACT

relating to court-ordered representation in suits affecting the parent-child relationship.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 107.002(b), (c), and (e), Family Code, are amended to read as follows:

(b) A guardian ad litem appointed for the child under this chapter shall:

(1) within a reasonable time after the appointment, interview:

(A) the child in a developmentally appropriate manner, if the child is four years of age or older;

(B) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(C) the parties to the suit;

(2) seek to elicit in a developmentally appropriate manner the child's expressed objectives ~~[of representation]~~;

(3) consider the child's expressed objectives ~~[of representation]~~ without being bound by those objectives;

(4) encourage settlement and the use of alternative forms of dispute resolution; and

(5) perform any specific task directed by the court.

(c) A guardian ad litem appointed for the child under this chapter ~~[is not a party to the suit but]~~ is entitled to:

(1) receive a copy of each pleading or other paper filed with the court in the case in which the guardian ad litem is appointed;

(2) receive notice of each hearing in the case;

(3) participate in case staffings by an authorized agency concerning the child;

(4) attend all legal proceedings in the case but may not call or question a witness or otherwise provide legal services unless the guardian ad litem is a licensed attorney who has been appointed in the dual role;

(5) review and sign, or decline to sign, an agreed order affecting the child; and

(6) explain the basis for the guardian ad litem's opposition to the agreed order if the guardian ad litem does not agree to the terms of a proposed order.

(e) Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify *regarding, and is permitted to* ~~or~~ submit a report regarding, the guardian ad litem's recommendations *relating to* ~~regard-~~
~~ing~~:

(1) the best interests of the child; and

(2) the bases for the guardian ad litem's recommendations.

SECTION 2. Section 107.003, Family Code, is amended to read as follows:

Sec. 107.003. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CHILD AND AMICUS ATTORNEY. An attorney ad litem appointed to represent a child or an amicus attorney appointed to assist the court:

(1) shall:

(A) subject to *Rules 4.02, 4.03, and [Rule] 4.04*, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i) the child in a developmentally appropriate manner, if the child is four years of age or older;

(ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(iii) the parties to the suit;

(B) *seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;*

(C) *consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;*

(D) investigate the facts of the case to the extent the attorney considers appropriate;

(E) ~~[(C)]~~ obtain and review copies of relevant records relating to the child as provided by Section 107.006;

(F) ~~[(D)]~~ participate in the conduct of the litigation to the same extent as an attorney for a party;

(G) ~~[(E)]~~ take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings; ~~[and]~~

(H) ~~[(F)]~~ encourage settlement and the use of alternative forms of dispute resolution; *and*

(I) *review and sign, or decline to sign, a proposed or agreed order affecting the child;*

(2) must be trained in child advocacy or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) *request clarification from the court if the role of the attorney is ambiguous;*

(B) *request a hearing or trial on the merits;*

(C) *consent or refuse to consent to an interview of the child by another attorney;*

(D) receive a copy of each pleading or other paper filed with the court;

(E) ~~[(B)]~~ receive notice of each hearing in the suit;

(F) ~~[(C)]~~ participate in any case staffing concerning the child conducted by an authorized agency; and

(G) ~~[(D)]~~ attend all legal proceedings in the suit.

SECTION 3. Section 107.004, Family Code, is amended to read as follows:

Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR CHILD. Except as otherwise provided by this chapter, the attorney ad litem appointed for a child shall, *in a developmentally appropriate manner*:

(1) ~~seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;~~

[(2)] advise the child;

(2) ~~[(3)] provide guidance to the child;~~

[(4)] represent the child's expressed objectives of representation and follow the child's expressed objectives of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem;

~~[(5)] consider the impact on the child in formulating the attorney ad litem's presentation of the child's expressed objectives of representation to the court;~~ and

(3) *as appropriate, considering the nature of the appointment*, [(6)] become familiar with:

[(A)] the American Bar Association's standards of practice for attorneys who represent children in abuse and neglect cases, ~~[- and~~

[(B)] the suggested amendments to those standards adopted by the National Association of Counsel for Children, *and the American Bar Association's standards of practice for attorneys who represent children in custody cases.*

SECTION 4. Section 107.005(b), Family Code, is amended to read as follows:

(b) An amicus attorney shall, *in a developmentally appropriate manner*:

(1) ~~seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;~~

[(2)] with the consent of the child, ensure that the child's expressed objectives of representation are made known to the court;

(2) ~~[(3)] consider the impact on the child in formulating the amicus attorney's presentation of the child's expressed objectives of representation to the court;~~

[(4)] review and sign, or decline to sign, an agreed order affecting the child;

~~[(5)] explain the basis for the amicus attorney's opposition to the agreed order if the amicus attorney does not agree to the terms of a proposed order;~~

[(6)] explain the role of the amicus attorney to the child; ~~[and]~~

(3) [(7)] inform the child that the amicus attorney may use information that the child provides in providing assistance to the court; *and*

(4) *become familiar with the American Bar Association's standards of practice for attorneys who represent children in custody cases.*

SECTION 5. Section 107.006, Family Code, is amended to read as follows:

Sec. 107.006. ACCESS TO CHILD AND INFORMATION RELATING TO CHILD. (a) Except as provided by Subsection (c), in conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to [:

[(1)] the child[;] and

[(2)] any ~~[otherwise privileged or confidential]~~ information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, ~~[drug and alcohol treatment, or medical or mental health evaluation or treatment of the child,]~~ law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

(c) A *medical, mental health, or drug or alcohol treatment* record of a child ~~[at least 12 years of age]~~ that is privileged or confidential under other law may be released to a person appointed under Subsection (a) only in accordance with the other law.

SECTION 6. Sections 107.008(b) and (c), Family Code, are amended to read as follows:

(b) ~~An [Except as provided by Subsection (c), an]~~ attorney ad litem or an attorney appointed in the dual role who determines that the child cannot meaningfully formulate the child's expressed objectives of representation ~~[under Subsection (a)]~~ may present to the court a position that the attorney determines will serve the best interests of the child.

(c) ~~If a guardian ad litem has been appointed for the child in a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, an [An] attorney ad litem [or attorney appointed in the dual role] who determines that the child cannot meaningfully formulate the child's expressed objectives of representation [under Subsection (a)] shall, if a guardian ad litem has been appointed for the child]:~~

(1) *shall consult with the guardian ad litem and, without being bound by the guardian ad litem's opinion or recommendation, ensure that the guardian ad litem's opinion and basis for any recommendation regarding the best interests of the child are presented to the court; and*

(2) *may present to the court a position that the attorney determines will serve [present the child's objectives of representation to the court based on the guardian ad litem's opinion regarding] the best interests of the child.*

SECTION 7. Section 107.009, Family Code, is amended to read as follows:

Sec. 107.009. IMMUNITY. (a) A guardian ad litem, an attorney ad litem, or an amicus attorney appointed under this chapter is not liable for civil damages arising from *an action taken, a recommendation made, or an opinion given* in the capacity of guardian ad litem, attorney ad litem, or amicus attorney.

(b) Subsection (a) does not apply to an action taken, ~~[or]~~ a recommendation *made*, or an opinion given:

- (1) with conscious indifference or reckless disregard to the safety of another;
- (2) in bad faith or with malice; or
- (3) that is grossly negligent or wilfully wrongful.

SECTION 8. Section 107.021, Family Code, is amended to read as follows:

Sec. 107.021. DISCRETIONARY APPOINTMENTS. (a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity *requesting termination of the parent-child relationship or appointment of the entity as conservator of the child*, the court may appoint one of the following:

- (1) an amicus attorney;
- (2) an attorney ad litem; or
- (3) a guardian ad litem.

~~(a-1) In a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, the court shall, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, appoint one of the following:~~

- ~~(1) an amicus attorney; or~~
- ~~(2) an attorney ad litem.~~

(b) In determining whether to make an appointment under this section, the court:

(1) shall:

(A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; and

(B) balance the child's interests against the cost to the parties that would result from an appointment by taking into consideration the cost of available alternatives for resolving issues without making an appointment;

(2) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, *unless the appointment is otherwise required by this code*; and

(3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person.

SECTION 9. Section 107.022, Family Code, is amended to read as follows:

Sec. 107.022. CERTAIN PROHIBITED APPOINTMENTS. In a suit other than a suit filed by a governmental entity *requesting termination of the parent-child relationship or appointment of the entity as conservator of the child*, the court may not appoint:

(1) an attorney to serve in the dual role; or

(2) a volunteer advocate to serve as guardian ad litem for a child unless the training of the volunteer advocate is designed for participation in suits other than suits filed by a governmental entity *requesting termination of the parent-child relationship or appointment of the entity as conservator of the child*.

SECTION 10. Section 107.023, Family Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In a suit other than a suit filed by a governmental entity *requesting termination of the parent-child relationship or appointment of the entity as conservator of the child*, in addition to the attorney's fees that may be awarded under Chapter 106, the following persons are entitled to reasonable fees and expenses in an amount set by the court and ordered to be paid by one or more parties to the suit:

(1) an attorney appointed as an amicus attorney or as an attorney ad litem for the child; and

(2) a professional who holds a relevant professional license and who is appointed as guardian ad litem for the child, other than a volunteer advocate.

(d) *The court may determine that fees awarded under this subchapter to an amicus attorney, an attorney ad litem for the child, or a guardian ad litem for the child are necessities for the benefit of the child.*

SECTION 11. Section 107.031, Family Code, is amended to read as follows:

Sec. 107.031. VOLUNTEER ADVOCATES. (a) In a suit filed by a governmental entity *requesting termination of the parent-child relationship or appointment of the entity as conservator of the child*, the court may appoint a charitable organization composed of volunteer advocates whose charter mandates the provision of services to allegedly abused and neglected children or an individual who has received the court's approved training regarding abused and neglected children and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child.

(b) In a suit other than a suit filed by a governmental entity *requesting termination of the parent-child relationship or appointment of the entity as conservator of the child*, the court may appoint a charitable organization composed of volunteer advocates whose training provides for the provision of services in private custody disputes or a person who has received the court's approved training regarding the subject matter of the suit and who has been certified by the court to appear at court hearings as a guardian ad litem for the child or as a volunteer advocate for the child. A person appointed under this subsection is not entitled to fees under Section 107.023.

(c) *A court-certified volunteer advocate appointed under this section may be assigned to act as a surrogate parent for the child, as provided by 20 U.S.C. Section 1415(b), if:*

(1) *the child is in the conservatorship of the Department of Family and Protective Services;*

(2) *the volunteer advocate is serving as guardian ad litem for the child; and*

(3) *a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code.*

SECTION 12. Section 2.103(e), Family Code, is amended to read as follows:

(e) The court shall appoint *an amicus attorney or an attorney* ~~[a guardian]~~ ad litem to represent the minor in the proceeding ~~[and to speak for or against the petition in the manner the guardian ad litem believes to be in the best interest of the minor]~~. The court shall specify a fee to be paid by the minor for the services of the *amicus attorney or attorney* ~~[guardian]~~ ad litem. The fee shall be collected in the same manner as other costs of the proceeding.

SECTION 13. Section 31.002(b), Family Code, is amended to read as follows:

(b) A parent of the petitioner must verify the petition, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by that person. If the person who is to verify the petition is unavailable or that person's whereabouts are unknown, the *amicus attorney or attorney* ~~[guardian]~~ ad litem shall verify the petition.

SECTION 14. Section 31.004, Family Code, is amended to read as follows:

Sec. 31.004. *REPRESENTATION OF PETITIONER* ~~[GUARDIAN AD LITEM]~~. The court shall appoint *an amicus attorney or attorney* ~~[a guardian]~~ ad litem to represent the interest of the petitioner at the hearing.

SECTION 15. Chapter 101, Family Code, is amended by adding Sections 101.0017, 101.0018, and 101.0145 to read as follows:

Sec. 101.0017. *AMICUS ATTORNEY*. "*Amicus attorney*" has the meaning assigned by Section 107.001.

Sec. 101.0018. *ATTORNEY AD LITEM*. "*Attorney ad litem*" has the meaning assigned by Section 107.001.

Sec. 101.0145. *GUARDIAN AD LITEM*. "*Guardian ad litem*" has the meaning assigned by Section 107.001.

SECTION 16. Section 105.004, Family Code, is amended to read as follows:

Sec. 105.004. *PREFERENTIAL SETTING*. After a hearing, the court may:

(1) grant a motion filed by a party or *by the amicus attorney or attorney* ~~[or guardian]~~ ad litem for the child for a preferential setting for a trial on the merits; and

(2) give precedence to that hearing over other civil cases if the court finds that the delay created by ordinary scheduling practices will unreasonably affect the best interest of the child.

SECTION 17. Section 160.608(c), Family Code, is amended to read as follows:

(c) In a proceeding involving the application of this section, a child who is a minor or is incapacitated must be represented by *an amicus attorney or attorney* ~~[a guardian]~~ ad litem.

SECTION 18. Section 160.612(b), Family Code, is amended to read as follows:

(b) The court shall appoint an *amicus attorney or attorney* ad litem to represent a child who is a minor or is incapacitated if the child is a party or the court finds that the interests of the child are not adequately represented.

SECTION 19. Section 161.202, Family Code, is amended to read as follows:

Sec. 161.202. *PREFERENTIAL SETTING*. In a termination suit, after a hearing, the court shall grant a motion for a preferential setting for a final hearing on the merits filed by a party to the suit or by the *amicus attorney or attorney* ~~[or guardian]~~ ad litem for the child and shall give precedence to that hearing over other civil cases if:

(1) termination would make the child eligible for adoption; and

(2) discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued.

SECTION 20. Section 203.004(a), Family Code, is amended to read as follows:

(a) A domestic relations office may:

(1) collect and disburse child support payments that are ordered by a court to be paid through a domestic relations registry;

(2) maintain records of payments and disbursements made under Subdivision (1);

(3) file a suit, including a suit to:

- (A) establish paternity;
- (B) enforce a court order for child support or for possession of and access to a child; and
- (C) modify or clarify an existing child support order;
- (4) provide an informal forum in which:
 - (A) mediation is used to resolve disputes in an action under Subdivision (3); or
 - (B) an agreed repayment schedule for delinquent child support is negotiated as an alternative to filing a suit to enforce a court order for child support under Subdivision (3);
- (5) prepare a court-ordered social study;
- (6) represent a child as *an amicus attorney, an attorney ad litem, or a guardian ad litem* in a suit in which:
 - (A) termination of the parent-child relationship is sought; or
 - (B) conservatorship of or access to a child is contested;
- (7) serve as a friend of the court;
- (8) provide predivorce counseling ordered by a court;
- (9) provide community supervision services under Chapter 157;
- (10) provide information to assist a party in understanding, complying with, or enforcing the party's duties and obligations under Subdivision (3); and
- (11) provide, directly or through a contract, visitation services, including supervision of court-ordered visitation, visitation exchange, or other similar services.

SECTION 21. Section 231.109(e), Family Code, is amended to read as follows:

(e) An attorney employed by the Title IV-D agency or as otherwise provided by this chapter may not be appointed or act as *an amicus attorney* [~~a guardian ad litem~~] or attorney ad litem for a child or another party.

SECTION 22. Section 235.001(b), Family Code, is amended to read as follows:

(b) The state case registry shall provide to a custodial parent under Subsection (a) who makes a request for information or, to the extent provided by federal law, to an *amicus attorney, attorney ad litem*, friend of the court, guardian ad litem, or domestic relations office designated by the parent any information in the registry required by 42 U.S.C. Section 654a(e) concerning the parent's case.

SECTION 23. Section 235.002, Family Code, is amended to read as follows:

Sec. 235.002. REQUEST TO INCLUDE CASE IN REGISTRY. The case of a custodial parent whose case would otherwise not be included in the state case registry under 42 U.S.C. Section 654a may be included in the state case registry by making a written request to the registry either directly or through an *amicus attorney, attorney ad litem*, friend of the court, guardian ad litem, or domestic relations office designated by the custodial parent. The request must be accompanied by a certified copy of the court order requiring the payment of child support.

SECTION 24. Section 263.303(a), Family Code, is amended to read as follows:

(a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, *the child's guardian ad litem*, and the child's volunteer advocate a permanency progress report unless the court orders a different period for providing the report.

SECTION 25. The changes in law made by this Act to Chapter 107, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 26. The changes in law made by this Act to Section 2.103, Family Code, apply only to a suit under that section filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 27. The changes in law made by this Act to Sections 31.002 and 31.004, Family Code, apply only to a suit under Chapter 31, Family Code, filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 28. The changes in law made by this Act to Sections 160.608 and 160.612, Family Code, apply only to a proceeding under Subchapter G, Chapter 160, Family Code, filed on or after the effective date of this Act. A proceeding filed before the effective date of this Act is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose.

SECTION 29. This Act takes effect September 1, 2005.

Passed by the House on April 13, 2005, by a non-record vote; passed by the Senate on May 12, 2005: Yeas 31, Nays 0.

Approved May 27, 2005.

Effective September 1, 2005.

CHAPTER 173

H.B. No. 340

AN ACT

relating to the authority of a navigation district to establish a volunteer police reserve force.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter D, Chapter 60, Water Code, is amended by adding Section 60.0775 to read as follows:

Sec. 60.0775. POLICE RESERVE FORCE. (a) The commission of a district that has established a police force may establish a volunteer police reserve force.

(b) The commission shall establish qualifications and training standards for reserve force members.

(c) The commission may limit the size of the reserve force.

(d) The chief of the district police force shall appoint volunteers to serve as reserve force members. Members are not district employees and serve without pay and at the chief's discretion.

(e) The chief of police may call the reserve force into service at any time the chief considers it necessary to have additional officers to preserve the peace and enforce the law.

(f) A reserve force member who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, may act as a peace officer only during the discharge of official duties. A reserve force member who is a peace officer under that article must hold a permanent peace officer license issued under Chapter 1701, Occupations Code.

(g) The commission must approve an appointment to the reserve force before the person appointed may carry a weapon or otherwise act as a peace officer. On approval of the appointment of a person who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, the person appointed may carry a weapon only when authorized to do so by the chief of police and only when discharging official duties as a peace officer. On approval of the appointment of a person who is a peace officer as described by Article 2.12, Code of Criminal Procedure, the chief of police may:

(1) authorize the person appointed to carry a weapon or act as a peace officer at all times, regardless of whether the person is engaged in the discharge of official duties; or

(2) limit the person's authority to carry a weapon or act as a peace officer to only those times during which the person is engaged in the discharge of official duties.

(h) Reserve police officers may act only to supplement the district's regular police force and may not assume the full-time duties of regular police officers without complying with the requirements for regular police officers.